

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HILLARY BEST, also known as Hilary Best,	X	
	:	
	:	
Petitioner,	:	
v.	:	<u>ORDER</u>
	:	20-CV-2382 (WFK)(LB)
NEW YORK CITY POLICE DEPARTMENT	:	
SEX OFFENDER UNIT,	:	
	:	
Respondent.	:	
	X	

WILLIAM F. KUNTZ, II, United States District Judge:

On April 23, 2020, Petitioner Hillary Best filed this *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging the constitutionality of his 2007 conviction in the New York Supreme Court, Queens County. ECF No. 1. By Order dated June 3, 2020, ECF No. 2, the Court explained the “in custody” standing requirement and statute of limitations applicable to § 2254 petitions, found the Petition failed to meet either requirement, and directed Petitioner to show cause by written affirmation, within thirty days of entry of the Order, why the Petition should not be dismissed.

By Order dated July 15, 2020, ECF No. 15, the Court denied Petitioner’s request for counsel and dismissed the Petition for lack of jurisdiction as Petitioner was no longer “in custody” pursuant to the 2007 conviction or sentence at the time he filed the Petition. The Clerk of Court entered judgment on July 17, 2020.

On the day the judgment was entered, Petitioner filed a notice of appeal¹ and a “Notice of Motion for Re-Argument.” ECF No. 18. By Order dated July 24, 2020, ECF No. 21, to the

¹By Mandate issued February 3, 2021, the Second Circuit dismissed Petitioner’s appeal of the denial of his motion for the appointment of counsel and denied his motion for a preliminary injunction as moot. ECF No. 28.

extent that Petitioner sought additional time to file a response to the Court's June 3, 2020 Order, the Court vacated the Judgment entered July 17, 2020 and granted Petitioner until August 24, 2020 to do so. The Court warned Petitioner that if he failed to respond to the Court's June 3, 2020 Order within the time allowed, Judgment would enter. Petitioner was granted several extensions of time, the last of which expired on January 29, 2021. Petitioner has not responded to the Court's June 3, 2020 Order.

Instead, by letter dated January 29, 2021, Petitioner writes to repeat his request for *pro bono* counsel. ECF No. 29. The Court has reviewed Petitioner's request for the appointment of *pro bono* counsel together with his Petition and hereby DENIES his request. *Harnage v. Gerbing*, 13-CV-4598, 2013 WL 5775770, at *2 (E.D.N.Y. Oct. 25, 2013) (Seybert, J.) (citing *Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 635 (2d Cir. 2001) (“[C]ounsel should not be appointed in a case where the merits of the indigent's claim are thin and his chances of prevailing are therefore poor.”)).

CONCLUSION

Accordingly, the Petition is hereby DISMISSED for lack of jurisdiction because Petitioner was not “in custody” pursuant to the 2007 conviction or sentence at the time he filed the Petition. Petitioner's application for counsel is hereby DENIED. The Clerk of Court is directed to enter judgment and close this case.

As Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c)(2); *Lucidore v. New York State Div. of Parole*, 209 F.3d 107, 111–12 (2d Cir. 2000).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order

would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

The Clerk of Court is directed to mail a copy of this Order to Hillary Best, *pro se*, at his address of record and note the mailing on the docket.

SO ORDERED.

s/ WFK

HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, New York
February 9, 2021